

STATE OF VERMONT

HUMAN SERVICES BOARD

In re) Fair Hearing No. 15,160

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Appeal of)

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INTRODUCTION

The petitioner appeals a decision of the Department of Social Welfare removing his wife's needs from their Food Stamp grant due to noncompliance with the Food Stamp program work regulations.

FINDINGS OF FACT

1. The petitioner is a disabled man who is on Social Security. He lives with his forty-six-year-old wife and their eighteen-year-old son who is a high school student. They receive Food Stamps as a household of three.
2. The petitioner's wife has been designated as the family's primary wage earner for purposes of Food Stamp work requirements. The petitioner's wife was notified by the Department that she needed to register for Reach Up as a condition for receiving Food Stamps and she attended an initial meeting on August 7, 1997 for that purpose which the petitioner also attended. The wife was informed at that time that she was required to look for work and that she was to report back on August 19 to discuss her efforts and to sign up to volunteer to work for benefits.
3. Either at that meeting or subsequently, the petitioner brought up the fact that he thought his wife should be found to be disabled because she had been exempted under the same medical circumstances last year. The DET worker told him to get documentation of that fact. On August 18, 1997, the petitioner's wife's doctor called DET to say that he could not confirm her condition because he had not seen her in seven years.
4. The petitioner's wife did not come in on August 19, 1997, although the petitioner says that they did understand that they were to return that day. He cannot remember why they did not come in but believes it had something to do with car problems or a lack of gas money. There is no record that he called in on that day.
5. On August 20, 1997, the DET worker notified the Department of Social Welfare that the petitioner's wife did not report for her DET interview. No evidence was offered by the Department that any attempt was made at that time to contact the petitioner's wife or to offer her any conciliation. On August 25,

1997, DSW sent the petitioner a letter stating that his household would be reduced from 3 to 2 persons resulting in a decrease in benefits from \$163 to \$68 per month because petitioner's wife failed to comply with a Food Stamp work registration requirement and was being removed from the grant. The petitioner was advised that his wife would remain ineligible to receive benefits until she cooperated or became exempt from work registration requirements.

6. In response to this notice, the petitioner's wife called to say she had injured her knee and could not work and appealed the Department's decision. Her husband appeared for her at the hearing and reiterated his wife's position that she should be exempt from work requirements because she could not work. He stated that his wife did not reschedule the appointment and did not intend to make other appointments because she is disabled. The wife herself did not appear at the hearing.

7. The petitioner submitted reports from his wife's doctor dated January 23, 1990, showing that she had some same day minor surgery under a local anaesthetic to excise some soft tissue mass between the third and fourth toes of her left foot to relieve pain. Follow up notes during the next few months indicated that she felt better but was having trouble getting her shoes on. The notes also stated that on August 13, 1997, the petitioner had called her doctor to report that his wife's feet were still hurting and asking him to comment on her ability to work for DET. The doctor felt he could not comment on this because he had not seen the petitioner's wife in seven years.

8. At the hearing held October 30, 1997, the petitioner was given until the end of November to submit a letter from his wife's doctor saying that she was unable to work. The petitioner did not submit any medical evidence by the date agreed upon. No finding can be made from the evidence available that the petitioner's wife is unable to work.

ORDER

The decision of the Department is reversed and remanded to allow the Department to initiate a conciliation process with the petitioner's wife.

REASONS

The Food Stamp regulations require persons who are not exempt to register for employment at the time of application for Food Stamps and to participate in an employment and training program if assigned by the State agency. F.S.M. §§ 273.7(a) and (e). As part of the employment and training program, the state may require the recipient to participate in a job search program. F.S.M. § 273.7(f)(1)(i).

Persons who are physically or mentally unfit are among the individuals exempted from work registration requirements. F.S.M. § 273.7(b)(1)(ii). Those same regulations go on to say that:

. . . If mental or physical unfitness is claimed and the unfitness is not evident to the State agency, verification may be required. Appropriate verification may consist of receipt of temporary or permanent disability benefits issued by governmental or private sources, or of a statement from a physician or licensed or certified psychologist.

It cannot be concluded from the evidence provided by the petitioner that his wife is disabled and thus entitled to an exemption from work registration requirements. In that case, his wife is required to participate in work activities prescribed for her by the regulation, including work search activities.

DET notified the Department that the petitioner had failed to keep an appointment to go over her work search efforts, a requirement which it apparently had a right to impose on the petitioner. The regulations provide that an individual "who has refused or failed without good cause to comply with the requirements imposed by this section. . .for a first violation, shall be ineligible to participate in the Food Stamp program until" s/he either complies with the work requirements or a month has passed since the ineligibility determination, whichever is later. F.S.M. § 273.7(g)(1).

However, before any of this can occur, upon learning of a failure to comply with DET requirements, the Department is specifically required under its own regulations to set up a conciliation process as follows:

. . .

ii. The State agency shall develop conciliation procedures to be used upon determining that an individual has refused or failed to comply with an E & T [Employment and Training] requirement. The purpose of the conciliation effort is to determine the reason(s) the work registrant did not comply with the E & T requirement and provide the noncomplying individual with an opportunity to comply prior to the issuance of the notice of adverse action. The conciliation period shall begin the day following the date the State agency learns of the noncompliance and shall continue for a period not to exceed 30 calendar days.

Within this conciliation period, the State agency shall, at a minimum, contact the noncomplying household member to ascertain the reason(s) for the noncompliance and determine whether good cause for the noncompliance exists, as discussed in paragraph (m) of this section. If good cause does not exist, the State agency shall inform the household member of the pertinent E & T requirements and the consequences of failing to comply. The household member shall be informed of the action(s) necessary for compliance and the date by which compliance must be achieved to avoid the notice of adverse action. This day may not exceed the end of the conciliation period.

To avoid the notice of adverse action, the noncomplying household member must perform a verifiable act of compliance, such as attending a job search training session or submitting a report of job contacts. Verbal commitment by the household member is not sufficient, unless the household member is prevented from complying by circumstances beyond the household member's control, such as the unavailability of a suitable component.

If it is apparent that the individual will not comply (i.e., the individual refuses to comply and does not have good cause), the State agency may end the conciliation period early and proceed with the issuance of the notice of adverse action under paragraph (g)(1)(iii) of this section. The individual's refusal to comply shall be documented in the case file.

iii If the work registrant does not comply during the conciliation period the State agency shall issue a notice of adverse action to the individual of household as specified in 273.13, no later than the last day of conciliation period. If the notice of adverse action is issued prior to the end of the conciliation period, the notice may be canceled if the State agency is able to verify

that compliance was achieved by the end of the conciliation period.

. . .

F.S.M. § 273.7(g)

This process was not followed in this case. The Department did not contact the petitioner's wife, the noncomplying person, to inquire as to whether she had good cause for not attending that day or to give her an opportunity to comply. It appears that the notice decreasing the Food Stamps was sent out a mere three business days after DET notified the Department of the failure to show up for the appointment. Unless and until the Department follows this process it cannot send a letter of adverse action reducing Food Stamps to the noncomplying person or her Food Stamp group under F.S.M. § 273.7(g)(1)(iii) above. The matter should, therefore, be reversed and remanded to the Department to go through its own conciliation process with the noncomplying party before imposing sanctions.

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